

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Review of the Emergency Alert System	)	EB Docket No. 04-296
	)	

To: The Commission

**COMMENTS OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

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## SUMMARY

The Association for Maximum Service Television, Inc. (“MSTV”)

wholeheartedly supports the Commission’s ongoing efforts to improve public warning systems. Throughout the history of television, local broadcasters have worked with federal, state, and local governments to deliver timely and life-saving emergency information to the public. As the Commission considers the *Further Notice* concerning the Emergency Alert System (“EAS”), it should foster this highly successful public-private partnership, principally through steps that will help the EAS take full advantage of the benefits of DTV technology. At the same time, the Commission should refrain from adopting certain proposed regulations that, although well intentioned, could constrain broadcasters’ delivery of enhanced warning services to the public.

First, recognizing the concern that overexposure to emergency alerts can diminish the public’s attention to the most important and relevant alerts, the Commission should facilitate deployment of “virtual private” paths, which utilize the conditional access function of DTV technology to deliver alerts to a targeted portion of a broadcaster’s service area. The Commission could achieve this goal by encouraging transmission of a uniform alerting protocol by state and local emergency management agencies, inclusion of a uniform alerting protocol in DTV broadcasts, and design of television receivers to decode and present the targeted alerts to the intended recipients.

Second, given broadcasters’ successful track record of voluntarily partnering with state officials to deliver timely warning information to affected viewers, the Commission should recognize that there is no need for mandated state EAS access. If the Commission nevertheless decides to mandate state EAS access, it should narrowly tailor that access to avoid excessive transmission of EAS alerts to populations unaffected by an emergency as well as the issuance of competing mandatory alerts by two or more state governments.

Finally, the Commission should encourage the transmission of more widely accessible emergency alerts by state and local officials, but it should not adopt mandates proposed by the *Further Notice*, such as the proposed requirement that local broadcasters provide real-time transcription of visual EAS alerts transmitted by public officials. Such mandates would so burden local broadcasters as to detract from their ability to deliver their own emergency coverage, which includes the presentation of critical details of emergency information in formats accessible to both the visually and hearing impaired.

## **TABLE OF CONTENTS**

<b>SUMMARY .....</b>	<b>i</b>
<b>I. THE COMMISSION SHOULD FACILITATE DEVELOPMENT AND ADOPTION OF A UNIFORM ALERTING PROTOCOL TO ENABLE “VIRTUAL PRIVATE” EMERGENCY ALERTS.....</b>	<b>4</b>
<b>II. MANDATORY STATE EAS ACCESS IS UNNECESSARY, BUT SHOULD SUCH A MANDATE BE ADOPTED, IT SHOULD BE NARROWLY TAILORED TO AVOID DISRUPTION OF EMERGENCY COVERAGE TO LOCAL COMMUNITIES.....</b>	<b>7</b>
<b>III. THE COMMISSION SHOULD ENCOURAGE THE TRANSMISSION OF MORE WIDELY ACCESSIBLE EMERGENCY ALERTS BY STATE AND LOCAL OFFICIALS, BUT IT SHOULD NOT ADOPT PROPOSED MANDATES.....</b>	<b>10</b>

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In light of the broadcast industry’s longstanding commitment to informing the public of national, state, and local emergencies, the Association for Maximum Service Television, Inc. (“MSTV”) applauds the Commission’s ongoing efforts to improve public warning systems, and particularly the incorporation of digital television (“DTV”) into the existing Emergency Alert System (“EAS”).<sup>1</sup> As described below, the DTV technology in which local broadcasters have invested billions of dollars will allow broadcasters to provide enhanced emergency communications to the public. The Commission should take steps to encourage the continued development of such services, while refraining from adopting regulations that would prematurely constrain them.

In considering the future of EAS, the Commission should recognize that throughout the history of television, local broadcasters have delivered timely and life-saving emergency information to the public. This commitment is reflected not only in the industry’s

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<sup>1</sup> First Report and Order and Further Notice of Proposed Rulemaking, *Review of the Emergency Alert System*, EB Docket No. 04-296, 20 FCC Rcd 18625 (2005) (“*EAS R&O/FNPRM*”).

longstanding compliance with national EAS mandates and regular transmission of state and local EAS alerts, but even more importantly in emergency coverage that consistently serves as a lifeline during local, regional, and national emergencies. In considering this record of service to the public, it bears emphasis that no “mandatory” (*i.e.*, national) EAS alert has ever been issued. Rather, broadcasters’ transmission of “voluntary” state and local EAS alerts, as well as their extensive coverage of local emergencies, represent a model public-private partnership.

For example, when it became evident that Hurricane Katrina was headed towards the Gulf Coast, local television stations began wall-to-wall hurricane coverage, alerting the local community about the impending dangers and urging residents, including those in New Orleans, to evacuate.<sup>2</sup> As a representative of one such broadcaster, WWL-TV, New Orleans, explained the station’s role in assisting these lifesaving evacuation efforts, “We provided critical information about traffic routes, informing them of the safest and least congested ways to leave the city.”<sup>3</sup> Indeed, the American Red Cross, Salvation Army, and the mayor of New Orleans have all credited broadcasters’ efforts with saving lives.<sup>4</sup> Once the hurricane made its devastating landfall, local broadcasters remained a key link between government officials –

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<sup>2</sup> A video documenting these efforts of local television broadcasters in the Gulf Region may be viewed online at <http://www.mstv.org/honoring.html> (“*Gulf Region Video*”).

<sup>3</sup> *Id.*

<sup>4</sup> Press Release, National Association of Broadcasters, *NAB Teams with Salvation Army and Red Cross in Hurricane Katrina Relief Efforts* (Sept. 6, 2005), available at [http://www.nab.org/newsroom/pressrel/Releases/090605\\_HurricaneKatrina\\_Radiohandsets.htm](http://www.nab.org/newsroom/pressrel/Releases/090605_HurricaneKatrina_Radiohandsets.htm) (quoting Commissioner Todd Bassett, National Commander, The Salvation Army, “Against enormous odds, local broadcasters throughout the Gulf Coast region have done a remarkable job providing timely and accurate information to those stricken by Katrina’s wrath” and Marsha J. Evans, President and CEO of the American Red Cross, “In times of crisis, local broadcasters have been strong allies with the American Red Cross in helping us fulfill our mission of compassion for those in need.”); see also *Local TV and Radio Credited for Saving Lives*, Seattle Post-Intelligencer, Sept. 28, 2005, at B7.

including the governors of Louisiana, Mississippi, and Alabama – and the public by working cooperatively and creatively to maintain an on-air presence and thereby keep both local residents and the country informed of the severe crisis that followed the hurricane.<sup>5</sup> Indeed, the New Orleans Chief of Police remarked that broadcasters were “my only outlet ... when we had no way to get information to the public.”<sup>6</sup> During this time, broadcasters in the Gulf Region also transmitted numerous state and local EAS alerts originated by the National Weather Service (“NWS”) and other authorities.

The example of Hurricane Katrina, and after it Hurricanes Rita and Wilma, highlight the success of the partnership between local broadcasters and governments in delivering emergency alerts and other lifesaving information to the public. In considering the above-captioned *Further Notice of Proposed Rulemaking* (“*Further Notice*”), the Commission should endeavor to help this highly successful public-private partnership take full advantage of the benefits of DTV technology. As described below, the Commission can achieve this goal by (1) encouraging use of DTV technology to provide enhanced and targeted EAS alerts to the public, principally through adoption of a uniform alerting protocol via the seamless pass through and implementation of such a protocol in the Advanced Television Systems Committee

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<sup>5</sup> For example, after the New Orleans levees broke, WWL-TV maintained an on-air presence by relocating news operations to a broadcast facility at Louisiana State University, and later to noncommercial station WLPB in Baton Rouge. Similarly, after floodwaters overtook New Orleans station WDSU’s facilities, nineteen of the station’s employees relocated to Hearst-Argyle sister station WAPT in Jackson, Mississippi. WDSU’s signal was then sent from Jackson to a backup TV transmitter in New Orleans, as WDSU’s primary transmitter was under water. See, e.g., Craig Johnson, *Hurricane Katrina Tests Broadcasters: Gulf Coast Area Stations Improvise in Order to Stay on the Air*, TV Technology, Sept. 21, 2005, at [http://www.tvtechnology.com/features/news/n\\_hurricane\\_katrina.shtml](http://www.tvtechnology.com/features/news/n_hurricane_katrina.shtml) (last visited Jan. 23, 2006).

<sup>6</sup> See *Gulf Region Video* (interview with New Orleans Police Superintendent Eddie Compass).

(“ATSC”) standard; (2) facilitating continued success of voluntary public-private partnerships between state governors and broadcasters; and (3) encouraging collaborative efforts to improve access to EAS alerts for persons with disabilities and persons who do not speak English.

**I. THE COMMISSION SHOULD FACILITATE THE DEVELOPMENT AND ADOPTION OF A UNIFORM ALERTING PROTOCOL TO ENABLE “VIRTUAL PRIVATE” EMERGENCY ALERTS.**

A recent Senate Commerce Committee report concerning emergency alert systems explained that “a significant problem develops when citizens begin to ignore the alerts because they are receiving numerous alerts that do not pertain to them.”<sup>7</sup> MSTV shares this concern, and urges the Commission to facilitate development of “virtual private” paths, utilizing the conditional access functions of DTV technology, to deliver “immediate, simultaneous alerts to the appropriate community of responders and affected residents” without diluting the impact of EAS alerts through excess distribution.<sup>8</sup>

DTV technology enables broadcasters to deliver such private path warnings to viewers. As has been noted in this proceeding, DTV is “a powerful, wireless data transmission system” from which a broadcaster can send “any mix of HDTV, multiple standard-definition channels, or high-end data to any DTV reception device within 50-60 miles” using its 19.4 Mbps

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<sup>7</sup> S. Rep. No. 109-204, at 3 (2005).

<sup>8</sup> *Emergency Communications: The Emergency Alert System (EAS) and All-Hazard Warnings*, Congressional Research Service, at 2, 13 (2005), available at <http://www.fas.org/sgp/crs/homesec/RL32527.pdf> (last visited Jan. 18, 2006) (“*CRS Report*”) (noting also that existing alert systems in the U.S. suffer from an “[i]nsufficient ability to define, recognize and contact virtual communities”). This CRS report also illustrated the value of virtual private EAS warnings by explaining, “Before its towers collapsed, the World Trade Center might have benefited if virtual community or geo-targeted alert technology had been in place and activated.” *Id.* at 2.



bitstream.<sup>9</sup> Thus, within a relatively small portion of a DTV signal, a local broadcaster can transmit an encoded “addressable” stream of emergency information.<sup>10</sup> The conditional access coding would instruct receiving equipment within a targeted area to decode and present the alert to viewers – which could include tailored information regarding nearby evacuation routes, shelter information, and the like. Viewers throughout the rest of the service area, however, would receive uninterrupted regular programming and services.

To make private warning paths a reality, a common alerting standard must be developed and adopted both for the transmission of targeted alert information and the reception of that information by television receiving equipment. The absence of such a commonly adopted standard impedes broadcasters’ ability to receive and transmit encoded emergency alert information, as well as consumers’ access to receiving equipment that can decode and present that information as appropriate.

As MSTV and the National Association of Broadcasters (“NAB”) previously noted in this proceeding, such a standard is being developed through the Organization for the Advancement of Structured Information Standards (“OASIS”).<sup>11</sup> This standard, known Common Alerting Protocol (“CAP”), not only allows the simultaneous distribution of emergency alerts over multiple platforms (*e.g.*, television, radio, cable, satellite),<sup>12</sup> but also provides for the use of

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<sup>9</sup> *All-Hazards Alert Systems: Hearing Before the Senate Subcommittee on Disaster Prevention and Prediction*, 109th Cong. 2 (July 27, 2005) (statement of John M. Lawson, President and CEO, Association of Public Television Stations) (“Lawson Statement”).

<sup>10</sup> *Id.* at 3 (explaining that DTV transmissions can be “addressed” through conditional access to a select group of end-users).

<sup>11</sup> See Joint Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., EB Docket No. 04-296, at 14 (filed Oct. 29, 2004) (“MSTV/NAB Joint EAS Comments”).

<sup>12</sup> *EAS R&O and FNPRM* at ¶ 67.

standardized geospatial information, which enables the proper encoding and decoding of virtual private alerts.<sup>13</sup> Moreover, an open, flexible standard, such as CAP, is adaptable to change, thereby ensuring that a virtual private alerting system can accommodate technical improvements for years to come.<sup>14</sup>

A uniform alerting protocol such as CAP is not a theoretical development<sup>15</sup>; it exists in at least preliminary form *today* and steps should be taken in the near future to encourage transmission of a uniform alerting protocol by state and local emergency management agencies, inclusion of a uniform alerting protocol in DTV broadcasts, and design of television receivers to include necessary reception capability. In taking these steps, however, the Commission should ensure that such a protocol is adopted in a manner that maintains, at least for the time being, the functionality of legacy EAS equipment.

Specifically, the Commission should first advocate both before Congress and in collaboration with the Department of Homeland Security and National Oceanic and Atmospheric Administration to ensure that state and local emergency management officials have the funding and expertise necessary to transmit messages that utilize a uniform alerting protocol but are

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<sup>13</sup> See *CAP Fact Sheet*, CAP Cookbook (June 30, 2005), at [http://www.incident.com/cookbook/index.php/CAP\\_Fact\\_Sheet](http://www.incident.com/cookbook/index.php/CAP_Fact_Sheet) (last visited Jan. 18, 2006).

<sup>14</sup> A representative of the National Weather Service recently testified before Congress that “[f]lexibility must be ‘built in’ to formats, standard and protocols used to disseminate [emergency alert] information.” *All-Hazards Alert Systems: Hearing Before the Senate Subcommittee on Disaster Prevention and Prediction*, 109th Cong. 2 (July 27, 2005) (statement of Mark Pease, Director, Maintenance, Logistics and Acquisition Division, National Weather Service).

<sup>15</sup> Indeed, the Department of Homeland Security, in coordination with noncommercial educational broadcasters and other telecommunications providers, has already conducted successful tests of enhanced EAS alerts that utilize CAP. See Lawson Statement at 3 (discussing FEMA/APTS Digital Emergency Alert System – National Capital Region Pilot Project and noting that Phase I of the pilot project was “a resounding success”).

nevertheless compatible with legacy EAS equipment. Second, the Commission should encourage ATSC to adopt a standard by which broadcasters could seamlessly pass through virtual private paths in their DTV transmissions. And, to the extent necessary and once an ATSC uniform alerting protocol standard is sufficiently developed, the Commission should also encourage or mandate consumer manufacturers to implement such a protocol in their products.

**II. MANDATORY STATE EAS ACCESS IS UNNECESSARY, BUT SHOULD SUCH A MANDATE BE ADOPTED, IT SHOULD BE NARROWLY TAILORED TO AVOID DISRUPTION OF EMERGENCY COVERAGE TO LOCAL COMMUNITIES.**

As discussed above, local broadcasters have a proven track record of partnering with state and local officials, including governors, to provide timely and accurate emergency information to the public.<sup>16</sup> These efforts have thrived despite their “voluntary” nature.<sup>17</sup> Indeed, local broadcasters devote considerable time and resources to be the “first” with local news, particularly during times in which the public’s safety is at issue.<sup>18</sup> If the governor issues a warning of significance to broadcasters’ viewers, broadcasters air it. There is accordingly no demonstrated need for the proposal of the *Further Notice* to require local broadcasters to

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<sup>16</sup> See *CRS Report* at 3 (“For the broadcast of non-federal emergency messages, the FCC has ruled that the broadcasters, not a state or local authority, have the final authority to transmit a message. Historically, the level of cooperation from the broadcasting industry has been high.”).

<sup>17</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, 10 FCC Rcd 1786, 1790 ¶ 9 (1994) (“The Commission requires the use of EBS only in the event of a national emergency. State and local authorities, however, may request use of the EBS to provide early warning to communities about regional, state, county, and local emergencies.”).

<sup>18</sup> See, e.g., Comments of the North Carolina Association of Broadcasters, EB Docket No. 04-296, at 6 (filed Oct. 29, 2004).

“transmit EAS messages issued by the governor(s) of the state(s) in which they provide service.”<sup>19</sup>

Moreover, there may be practical limitations with providing state governments with guaranteed EAS access, which could in some cases impede broadcasters’ delivery of important emergency information to their communities. First, unlike the current mandatory EAS mechanism, which is designed to allow the President of the United States to deliver an alert of national significance,<sup>20</sup> mandatory alerts by state governments could result in statewide preemption of local news and programming to deliver an alert of significance to only one section of a state. To illustrate, under the *Further Notice*’s proposal, if the governor of California were to activate an alert concerning a wildfire in San Diego, regular news coverage and programming for residents in Sacramento could be interrupted. Contrary to the above-described efforts to deliver more narrowly targeted emergency alerts, viewers would face a barrage of irrelevant alerts, desensitizing them to EAS generally and potentially disrupting access to information of greater relevance to them.

Second, local broadcasters with service areas that reach more than one state could face potentially contradictory demands that they transmit live, mandatory messages. Thus, as a practical matter, activation of the mandatory EAS by one state could prevent a neighboring state from transmitting a more relevant, real-time alert to its residents. For example, in a regional emergency affecting southern New England, the governments of Connecticut, Rhode Island, and

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<sup>19</sup> See *EAS R&O and FNPRM* at ¶ 73.

<sup>20</sup> It is noteworthy that even during the terrorist attacks in New York, Virginia and Pennsylvania on September 11, 2001, no mandatory EAS alert was issued. Regardless, broadcasters across the country provided round-the-clock coverage of the situation, including statements by the President, federal agency heads and respective state leaders.

Massachusetts might each issue a live, “mandatory” alert message. A station in Providence, with a service area covering all three states, would be “required” to transmit three simultaneous but different messages. These conflicting mandates could create chaos during an emergency, detracting from local broadcasters’ ability to deliver crucial emergency information to local populations and preempting a neighboring state government or the Federal government from providing critical real-time emergency information.

Although MSTV maintains that a mandatory state EAS is unnecessary, it emphasizes that were the Commission to adopt mandatory state EAS access, it is essential that such access be narrowly defined. Only state governors, and not other state officials, should be allowed to issue a “mandatory” EAS alert. Such a limitation would likely limit the issuance of mandatory alerts to the most widespread emergencies, thereby mitigating the risk that the public will become desensitized to the alert system. Also, the federal government should have a coordinating role in the transmission of mandatory state EAS alerts, so that there is a clear line of authority in the event that more than one state governor issues a “mandatory” alert to a single broadcaster.

Finally, as MSTV has already documented in this proceeding,<sup>21</sup> the Commission does not have clear statutory authority to adopt mandatory requirements for state EAS warnings. Specifically, Section 706 of the Communications Act provides solely for the authority of the President of the United States to alter the rules that otherwise apply to broadcasting stations in order to protect national security or defense. 47 U.S.C. § 606. Other, more general, sections of

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<sup>21</sup> See MSTV/NAB EAS Comments at 25-30.

the Act on which the Commission bases its EAS authority<sup>22</sup> also cannot be read to authorize the Commission to regulate state EAS alerts.<sup>23</sup> The Commission should carefully evaluate these statutory concerns before adopting any mandated state EAS mechanism.

**III. THE COMMISSION SHOULD ENCOURAGE THE TRANSMISSION OF MORE WIDELY ACCESSIBLE EMERGENCY ALERTS BY STATE AND LOCAL OFFICIALS, BUT IT SHOULD NOT ADOPT PROPOSED MANDATES.**

MSTV supports the Commission's goals of making EAS alerts more accessible to people with disabilities and to non-English speaking populations. Just as broadcasters' considerable investment in DTV technology enables them to deliver more targeted emergency information, it also could enable them to broadcast enhanced warning information to populations for whom the alert may otherwise not be sufficient. In pursuing this laudable goal, however, the Commission should not adopt mandates that would so burden local broadcasters as to detract from their ability to deliver their own emergency coverage, which includes the presentation of critical details of emergency information in formats accessible to the visually and hearing impaired.

First, the *Further Notice* correctly identifies the need for EAS message originators, such as FEMA and state emergency operations centers, to provide EAS alerts in both audible and visual format to make the messages more fully accessible to individuals with hearing

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<sup>22</sup> *EAS R&O and FNPRM* at ¶ 5 (“The Commission’s authority to regulate emergency alerts and warnings emanate from sections 1, 4(i) and (o), 303(r), and 706 of the Communications Act of 1934, as amended.”).

<sup>23</sup> MSTV/NAB’s earlier comments in this proceeding provide further explanation as to the Commission’s apparent lack of statutory authority to mandate broadcast of EAS messages originated by state and local authorities, and these comments are incorporated herein by reference. *See* MSTV/NAB EAS Comments at 25-30.

and visual disabilities.<sup>24</sup> Given its expertise in the area of communications access for disabled persons, the Commission should work with FEMA to develop plans for origination of more accessible alerts in a format that could readily be retransmitted by broadcasters to the public.

It would be counterproductive, however, for the Commission to shift the burden of originating accessible alerts to local broadcasters – either by requiring local broadcasters to “make an audio EAS message accessible to those with hearing disabilities by using a transcription of the audio message through the use of ... visual presentation ... that appear on the screen” or “provide an audio feed that duplicates any text portion of an EAS alert.”<sup>25</sup> Section 79.2 of the Commission’s rules already ensures that local broadcasters make critical details of emergency information available to visually impaired and hearing impaired viewers.<sup>26</sup> There is accordingly a mechanism in place to ensure that *all* viewers receive critical details about an emergency in a form that is accessible. Thus, to the extent that the *Further Notice*’s proposals would require simultaneous or virtually simultaneous accessible information to accompany an otherwise inaccessible EAS alert, these proposals would impose unreasonable burdens on local broadcasters that would ultimately detract from the quality and quantity of emergency information provided to the public, *including* to visually or hearing impaired viewers who rely on broadcasters’ accessible coverage of critical details about emergency information.<sup>27</sup>

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<sup>24</sup> *EAS R&O and FNRPM* at ¶ 78.

<sup>25</sup> *Id.* at ¶ 79. MSTV notes also that adoption of such mandates raise significant statutory concerns. *See, e.g.*, Comments of NAB in Response to Petition for Immediate Interim Relief, EB Docket No. 04-296, at 2-4 (filed Oct. 14, 2005) (“NAB Petition Comments”).

<sup>26</sup> *See* 47 C.F.R. § 79.2.

<sup>27</sup> In the midst of covering a breaking local emergency, local broadcasters simply do not have the resources to create either a real-time transcript of an audible EAS alert or a real-time recitation of a visual EAS alert. Such a requirement would take much-needed station resources away from (continued...)

Second, to make EAS alerts more accessible to non-English speaking communities, the Commission should work with FEMA and other EAS originators to transmit alerts that would take advantage of DTV broadcasters' ability to broadcast multiple audio streams. The goal would be to have multilingual EAS tracks transmitted within a single EAS alert. MSTV would welcome the opportunity to assist the Commission in such efforts. Again, however, mandates in this area would be premature at best and would likely detract from local stations' ability to provide comprehensive emergency coverage to their local communities.<sup>28</sup>

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covering the emergency (which coverage includes the accessible presentation of critical details about the emergency situation) and away from prompt retransmission of EAS alerts to the public.

<sup>28</sup> For example, a coalition led by the Minority Media and Telecommunications Council has proposed that the Commission require that "if during an emergency a [Local Primary Spanish ("LP-S")] or ["Local Primary - Multilingual ("LP-M")] station loses its transmission capability, stations remaining on the air should broadcast emergency information in the affected languages (at least as part of their broadcasts) until the affected LP-S or LP-M station is restored to the air." See Petition for Immediate Interim Relief, EB Docket No. 04-296, at 4 (filed Sept. 22, 2005). Implementation of this requirement, however, would be highly problematic. For example, it is unclear how stations would receive the multilingual EAS message if the LP-M station were nonoperational. See, e.g., NAB Petition Comments at 4-6.



## CONCLUSION

As explained above, the Commission should take steps to enhance the existing, successful partnerships between local broadcasters and federal, state, and local officials in delivering timely and life-saving warning information to the public. Most notably, the Commission should encourage the development, implementation, and reception capability of a uniform alerting protocol, which will allow the successful delivery of targeted warning messages using broadcasters' DTV technology. The Commission should also refrain from adopting certain proposed regulations that, although well intentioned, could constrain broadcasters' delivery of enhanced warning services to the public.

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